

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
September 30, 2004

Present: Chairperson James Tilton
Representative of the Director of the Department of Finance
Member Linda McAtee
Representative of the State Treasurer
Member Walter Barnes
Representative of the State Controller
Member Jan Boel
Acting Director of the Office of Planning and Research
Member John Lazar
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Tilton called the meeting to order at 9:39 a.m.

APPROVAL OF MINUTES

Item 1 July 29, 2004

Upon motion by Member Lazar and second by Member Boel, the minutes were unanimously adopted.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

Item 2 Staff Report on Appeals Related To Current Agenda Items (if necessary)

No appeals were filed.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

PROPOSED STATEMENT OF DECISION

Item 7 *DNA Database*, 00-TC-27
County of San Bernardino, Claimant
Penal Code Section 14250
Statutes 2000, Chapter 822 (SB 1818)
-and-
Amendment to *Postmortem Examinations: Unidentified Bodies*, 02-TC-39
County of Los Angeles, Claimant
Penal Code Section 14250
Statutes 2001, Chapter 467 (SB 297)

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 9 *Charter Schools II*, 99-TC-03
San Diego Unified School District and
Los Angeles County Office of Education, Claimants
Education Code Sections 47605, Subdivisions (j)(1) and (k)(3),
47605.5, 47607, and 47614
Statutes 1998, Chapters 34 and 637 (AB 544 and AB 1958)
- Item 10 *Sexual Assault Response Procedures*, 99-TC-12
Los Angeles Community College District, Claimant
Education Code Sections 67385
Statutes 1990, Chapter 423 (AB 3098)
Statutes 1995, Chapter 758 (AB 446)
- Item 11 *Criminal Background Checks II*, 00-TC-05
Napa County Office of Education, Claimant
Education Code Sections 44830.1, 44830.2, 45122.1, 45125, 45125.01,
45125.1, and 45125.2
Statutes 1998, Chapters 594 and 840 (AB 1392 and AB 2102)
- Item 12 *Absentee Ballots: Tabulation by Precinct*, 00-TC-08
County of Orange, Claimant
Elections Code Sections 15111, 15321 and 21000
Statutes 1999, Chapter 697 (AB 1530)

Member McAtee moved for adoption of the consent calendar, which consisted of items 7, 9, 10, 11, and 12. With a second by Member Lazar, the consent calendar was unanimously adopted.

**HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)**

Paula Higashi, Executive Director, swore the parties and witnesses participating in the hearing of agenda items 3 through 6.

TEST CLAIMS AND PROPOSED STATEMENTS OF DECISION

- Item 3 *California English Language Development Test*, 00-TC-16
Modesto City School District, Claimant
Education Code Sections 313, 60810, 60811, 60812
Statutes 1997, Chapter 936 (AB 748)
Statutes 1999, Chapter 78 (AB 1115)
Statutes 1999, Chapter 678 (SB 638)
Statutes 2000, Chapter 71 (SB 1667)

Eric Feller, Commission Counsel, presented this item. He noted that the test claim legislation requires the Superintendent of Public Instruction to develop the California English Language Development Test for pupils learning English. Another statute requires these pupils to be tested upon enrollment, and annually thereafter until they are designated as English-proficient.

Staff found that the test claim legislation does not impose state-mandated activities because the requirements are found in a preexisting federal statute and in federal case law. Furthermore, the English language assessment was already required by state regulations enacted after Proposition 227 of 1998. Therefore, the test claim legislation does not constitute a new program or higher level of service.

Staff recommended that the Commission adopt the staff analysis, which denies the test claim.

Parties were represented as follows: Mike Brown, with MCS Education Services, on behalf of the claimant; and Susan Geanacou and Lenin Del Castillo, with the Department of Finance.

Mr. Brown stated that the claimant disagreed with the staff analysis but had nothing further to argue.

Mr. Del Castillo concurred with the staff analysis.

Member Barnes made a motion to adopt the staff recommendation. With a second by Member Boel, the motion carried unanimously.

Item 4 Proposed Statement of Decision: *California English Language Development Test*, 00-TC-16, as described above in Item 3.

Eric Feller, Commission Counsel, presented this item. He indicated that unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the test claim decision. Staff also recommended that the Commission allow minor changes to be made, which includes adding the hearing testimony and vote count.

Member McAtee made a motion to adopt the proposed Statement of Decision. With a second by Member Lazar, the motion carried unanimously.

Item 5 *Acquisition of Agricultural Land for a School Site*, 98-TC-04
Brentwood Union School District, Claimant
Education Code Sections 17213.1, 17215.5 (former § 39006)
Statutes 1996, Chapter 509 (AB 1724)
Statutes 1999, Chapter 1002 (SB 162)
Statutes 2000, Chapters 135 and 443 (AB 2539 and AB 2644)

Eric Feller, Commission Counsel, presented this item. He noted that the claimant sought reimbursement for various activities related to selecting a school site on land zoned for agricultural use, and for assessments required under the Leroy F. Greene School Facilities Act. Staff found that the test claim legislation did not constitute a reimbursable state-mandated program for the following reasons:

- 1) As to Education Code section 17515.5, the findings a school district must make if selecting a school site on land zoned for agricultural use is not state-mandated because the decision to build a school, where to locate the school, and to acquire the agricultural land is discretionary by state law.
- 2) As to Education Code section 17213.1, the procedures that a school district must follow when seeking state funding pursuant to the Leroy F. Greene School Facilities Act are not state-mandated because the district is not required to request state funding under the Act.

Mr. Feller stated that the claimant requested the Commission find a limited exception to reimburse districts that can establish they were practically compelled to build a new school site on agricultural land due to overpopulation or expected additional development and growth within the district. For these districts, the claimant argued that the only available option was to acquire agricultural land. However, Mr. Feller indicated that the claimant failed to submit evidence to support such a finding. Therefore, staff recommended that the Commission adopt the staff analysis, which denies the test claim.

Parties were represented as follows: David Scribner, on behalf of the claimant; and Susan Geanacou, Blake Johnson, and Walt Schaff, with the Department of Finance.

Mr. Scribner related the difficulty in finding a school district to meet the exception and was unable to obtain a declaration before the hearing. He added that they would continue to seek a declaration and would request a reconsideration if they obtained one before the deadline to request a reconsideration expires.

Mr. Johnson concurred with the staff analysis.

Member Lazar made a motion to adopt the staff analysis. With a second by Member Boel, the motion carried unanimously.

Item 6 Proposed Statement of Decision: *Acquisition of Agricultural Land for a School Site*, 98-TC-04, as described above in Item 5.

Eric Feller, Commission Counsel, presented this item. He indicated that unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the test claim decision. Staff also recommended that the Commission allow minor changes to be made, which includes adding the hearing testimony and vote count.

Member Lazar made a motion to adopt the proposed Statement of Decision. With a second by Member McAtee, the motion carried unanimously.

Item 8 *Administrative License Suspension – Per Se*, 98-TC-16 (Tentative)
City of Newport Beach, Claimant
Vehicle Code Sections 13202.3, 13353, 13353.1, 13353.2, 14100,
23136, 23137, 23157, 23158.2, and 23158.5
As Added or Amended by Statutes 1989, Chapter 1460 (SB 1623)
Statutes 1990, Chapter 431 (SB 1150)
Statutes 1992, Chapter 1281 (AB 3580)
Statutes 1993, Chapters 899 and 1244 (SB 689)
Statutes 1994, Chapter 938 (SB 1295)
Statutes 1997, Chapter 5 (AB 74)

Item 8 was postponed to the next hearing.

STAFF REPORTS

Item 13 California Performance Review Report¹

?? Recommendation GG 32 – Reform the State Mandates Process to Make Reimbursement More Cost-Efficient, Predictable and Fair

?? Proposed Governor's Office of Management and Budget

Cathy Cruz, Program Analyst, presented this item. She stated that on August 3, 2004, the California Performance Review issued its report, which contained comprehensive recommendations to reform and revitalize California state government. The following recommendations are specific to the mandates reimbursement process:

- 1) The Governor should direct state agencies to review pending draft legislation as early in the process as possible and to focus on mandate impacts to make reimbursements more cost efficient, predictable, and fair.
- 2) The Governor should direct state agencies to actively review and provide input into the parameters and guidelines document during the Commission on State Mandates Process. This should occur whenever the Commission determines that a reimbursable mandate exists.
- 3) The Governor should direct the Department of Finance to develop standardized cost units for specific functions that claimants use in their cost submissions.

Ms. Cruz indicated that the California Performance Review asked state agencies and departments to submit analyses of these recommendations. The Commission's analysis stated that the recommendations would provide the Administration and the Legislature with timelier information about pending legislation that could result in cost savings to the State. The Commission also stated that the recommendations would assist in the development of parameters and guidelines and statewide cost estimates.

Moreover, Ms. Cruz noted that the California Performance Review recommended a significant restructuring of state government. One recommendation is to create the Governor's Office of Management and Budget to provide administrative and fiscal services for all areas of state government. The Commission on State Mandates would be transferred intact under this department. Ms. Cruz stated that the Commission was not requested to analyze the proposed reorganization.

Ms. Cruz said that the California Performance Review was conducting hearings around the state on the proposed reorganization and is expected to issue its final report on October 30, 2004. She informed the Commission that they would be kept apprised as further reports and recommendations are issued.

Member Lazar asked questions about the effects the recommendations would have on staffing. Ms. Higashi responded that the recommendation to transfer the Commission intact under the Office of Management and Budget would be beneficial because the disadvantages of being an independent organization include taking the full hit of a budget reduction and being left out of the communication loop. Further, she stated that staffing would be a function of the budget process, depending on the final version of the proposal following review by the Little Hoover Commission.

¹ The report is available online at www.cpr.ca.gov

Item 14 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Paul Starkey, Chief Legal Counsel, reported that there were no updates.

Item 15 Executive Director's Report (info/action)
Workload, Budget, Legislation, Next Hearing

?? *Workload.* At the last hearing, the Commission members requested an overview of the status of backlogged cases. Accordingly, Ms. Higashi reported that a number of old cases were inactive for several years and were going through the dismissal process. She explained that other test claims are on hold because they involve statutes and issues directly related to pending litigation.

Ms. Higashi noted that, as detailed in the table under section C of the report, the Legislature directed the Commission to reconsider an unprecedented number of old test claim decisions for various reasons. The statutory timeline for completion is January 1, 2006.

?? *Budget and Legislation.* The Commission's budget did not change this year, and the same number of positions was maintained. The Commission did not receive funding for SB 1033, but in anticipation of an application being filed shortly, the necessary documentation was submitted to the Department of Finance to request funding. A budget change proposal was also submitted to address the additional workload and statutory changes.

Ms. Higashi described some budget trailer bills, including SB 1096 and 1102. She also described SCA 4, the local government initiative on the November ballot. Moreover, she announced that the Governor signed AB 2224, AB 2851, AB 2853, AB 2855, and AB 2856. These bills affect the Commission's workload and processes. Member Barnes asked what action was required of the Commission. Ms. Higashi explained that the Commission would have to place a cap on the reimbursement period for some of the parameters and guidelines.

Ms. Higashi mentioned other related bills such as SB 815, SB 1271, and SB 1895. She acknowledged Nancy Patton, Assistant Executive Director, for her work in managing the legislation.

?? *Next Hearing Agenda.* Ms. Higashi noted that Mr. Allan Burdick, representing the California State Association of Counties, filed a request to postpone the next hearing to December. She stated that staff had no objection to the request. Chairperson Tilton, Member Lazar, and Member Barnes agreed.

Mr. Burdick explained that a number of issues were forthcoming, highlighting the importance of the CSAC annual meeting scheduled around the same time as the next Commission hearing. Thus, he requested that the hearing be postponed to December 9.

Member Lazar made a motion to move the November 18 Commission hearing to December 9. With a second by Member Barnes, the motion carried unanimously.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
2. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number C044162, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 02-L-05 [*Physical Performance Tests*]
3. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
4. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
5. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
6. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
7. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
8. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
9. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
10. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
11. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]
12. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]
13. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

?? Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Tilton adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Tilton reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, and upon motion by Member Lazar and second by Member McAtee, Chairperson Tilton adjourned the meeting at 10:41 a.m.

PAULA HIGASHI
Executive Director